

117TH CONGRESS
2D SESSION

H. R. 8966

To clarify regulatory certainty, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2022

Mr. KELLY of Pennsylvania introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committees on Energy and Commerce, Transportation and Infrastructure, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To clarify regulatory certainty, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Simplify Timelines and
5 Assure Regulatory Transparency Act” or the “START
6 Act”.

7 **SEC. 2. CODIFICATION OF NEPA REGULATIONS.**

8 The revisions to the Code of Federal Regulations
9 made pursuant to the final rule of the Council on Environ-
10 mental Quality titled “Update to the Regulations Imple-

1 menting the Procedural Provisions of the National Envi-
2 ronmental Policy Act” and published on July 16, 2020
3 (85 Fed. Reg. 43304), shall have the same force and effect
4 of law as if enacted by an Act of Congress.

5 **SEC. 3. PROVIDING REGULATORY CERTAINTY UNDER THE**
6 **FEDERAL WATER POLLUTION CONTROL ACT.**

7 (a) WATERS OF THE UNITED STATES.—The defini-
8 tions of the term “waters of the United States” and the
9 other terms defined in section 328.3 of title 33, Code of
10 Federal Regulations (as in effect on January 1, 2021),
11 are enacted into law.

12 (b) CODIFICATION OF SECTION 401 CERTIFICATION
13 RULE.—The final rule of the Environmental Protection
14 Agency entitled “Clean Water Act Section 401 Certifi-
15 cation Rule” (85 Fed. Reg. 42210 (July 13, 2020)) is en-
16 acted into law.

17 (c) CODIFICATION OF NATIONWIDE PERMITS.—The
18 Nationwide Permits issued, reissued, or modified, as appli-
19 cable, in the following final rules of the Corps of Engineers
20 are enacted into law:

21 (1) The final rule of the Corps of Engineers en-
22 titled “Reissuance and Modification of Nationwide
23 Permits” (86 Fed. Reg. 2744 (January 13, 2021)).

24 (2) The final rule of the Corps of Engineers en-
25 titled “Reissuance and Modification of Nationwide

1 Permits” (86 Fed. Reg. 73522 (December 27,
2 2021)).

3 (d) NATIONAL POLLUTANT DISCHARGE ELIMI-
4 NATION SYSTEM.—Section 402(b)(1)(B) of the Federal
5 Water Pollution Control Act (33 U.S.C. 1342(b)(1)(B))
6 is amended by striking “five years” and inserting “10
7 years”.

8 SEC. 4. PROHIBITION ON USE OF SOCIAL COST OF GREEN-
9 HOUSE GAS ESTIMATES RAISING GASOLINE
0 PRICES.

11 (a) IN GENERAL.—In promulgating regulations,
12 issuing guidance, or taking any agency action (as defined
13 in section 551 of title 5, United States Code) relating to
14 the social cost of greenhouse gases, no Federal agency
15 shall adopt or otherwise use any estimates for the social
16 cost of greenhouse gases that may raise gasoline prices,
17 as determined through a review by the Energy Informa-
18 tion Administration.

19 (b) INCLUSION.—The estimates referred to in sub-
20 section (a) include the interim estimates in the document
21 of the Interagency Working Group on the Social Cost of
22 Greenhouse Gases entitled “Technical Support Document:
23 Social Cost of Carbon, Methane, and Nitrous Oxide In-
24 terim Estimates under Executive Order 13990” and dated
25 February 2021.

1 SEC. 5. EXPEDITING PERMITTING AND REVIEW PROC- 2 ESSES.

3 (a) DEFINITIONS.—In this section:

(B)(i) the head of the lead agency has determined that an environmental impact statement is required; or

25 (ii) the head of the lead agency has deter-
26 mined that an environmental assessment is re-

1 quired, and the project sponsor requests that
2 the project be treated as an energy project.

3 (3) ENVIRONMENTAL IMPACT STATEMENT.—
4 The term “environmental impact statement” means
5 the detailed statement of environmental impacts re-
6 quired to be prepared under the National Environ-
7 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

8 (4) ENVIRONMENTAL REVIEW AND AUTHORIZA-
9 TION PROCESS.—The term “environmental review
10 and authorization process” means—

11 (A) the process for preparing for an energy
12 project an environmental impact statement, en-
13 vironmental assessment, categorical exclusion,
14 or other document prepared under the National
15 Environmental Policy Act of 1969 (42 U.S.C.
16 4321 et seq.); and

17 (B) the completion of any authorization
18 decision required for an energy project under
19 any Federal law other than the National Envi-
20 ronmental Policy Act of 1969 (42 U.S.C. 4321
21 et seq.).

22 (5) LEAD AGENCY.—The term “lead agency”
23 means—

24 (A) the Department of Energy;
25 (B) the Department of the Interior;

- (C) the Department of Agriculture;
- (D) the Federal Energy Regulatory Commission;
- (E) the Nuclear Regulatory Commission;

or

- (F) any other appropriate Federal agency, as applicable, that may be responsible for navigating the energy project through the environmental review and authorization process.

10 (6) PROJECT SPONSOR.—The term “project
11 sponsor” means an agency or other entity, including
12 any private or public-private entity, that seeks ap-
13 proval from a lead agency for an energy project.

14 (b) TIMELY AUTHORIZATIONS FOR ENERGY
15 PROJECTS.—

16 (1) IN GENERAL.—
17 (A) DEADLINE
18 subparagraph (C),
19 necessary for the
20 project shall be con-
21 days after the date
22 of decision for the
23 agency.

(B) DETAIL.—The final environmental impact statement for an energy project shall in-

1 clude an adequate level of detail to inform deci-
2 sions necessary for the role of any Federal
3 agency involved in the environmental review and
4 authorization process for the energy project.

5 (C) EXTENSION OF DEADLINE.—The head
6 of a lead agency may extend the deadline under
7 subparagraph (A) if—

8 (i) Federal law prohibits the lead
9 agency or another agency from issuing an
10 approval or permit within the period de-
11 scribed in that subparagraph;

12 (ii) the project sponsor requests that
13 the permit or approval follow a different
14 timeline; or

15 (iii) an extension would facilitate com-
16 pletion of the environmental review and
17 authorization process of the energy project.

18 (2) ENERGY PROJECT SCHEDULE.—To the
19 maximum extent practicable and consistent with ap-
20 plicable Federal law, for an energy project, the lead
21 agency shall develop, in concurrence with the project
22 sponsor, a schedule for the energy project that is
23 consistent with a time period of not more than 2
24 years for the completion of the environmental review

1 and authorization process for an energy project, as
2 measured from, as applicable—

3 (A) the date of publication of a notice of
4 intent to prepare an environmental impact
5 statement to the record of decision; or

6 (B) the date on which the head of the lead
7 agency determines that an environmental as-
8 sessment is required to a finding of no signifi-
9 cant impact.

10 (3) LENGTH OF ENVIRONMENTAL IMPACT
11 STATEMENT.—

12 (A) IN GENERAL.—Notwithstanding any
13 other provision of law and except as provided in
14 subparagraph (B), to the maximum extent
15 practicable, the text of the items described in
16 paragraphs (4) through (6) of section
17 1502.10(a) of title 40, Code of Federal Regula-
18 tions (or successor regulations), of an environ-
19 mental impact statement for an energy project
20 shall be 200 pages or fewer.

21 (B) EXEMPTION.—The text referred to in
22 subparagraph (A) of an environmental impact
23 statement for an energy project may exceed 200
24 pages if the lead agency establishes a new page

1 limit for the environmental impact statement
2 for that energy project.

3 (c) DEADLINE FOR FILING ENERGY-RELATED
4 CAUSES OF ACTION.—

5 (1) DEFINITIONS.—In this subsection:

(A) AGENCY ACTION.—The term “agency action” has the meaning given the term in section 551 of title 5, United States Code.

(B) ENERGY-RELATED CAUSE OF ACTION.—The term “energy-related cause of action” means a cause of action that—

18 (2) DEADLINE FOR FILING.—

22 (i) not later than 60 days after the
23 date of publication of the applicable final
24 agency action; or

8 (d) APPLICATION OF CATEGORICAL EXCLUSIONS FOR
9 ENERGY PROJECTS.—In carrying out requirements under
10 the National Environmental Policy Act of 1969 (42 U.S.C.
11 4321 et seq.) for an energy project, a Federal agency may
12 use categorical exclusions designated under that Act in the
13 implementing regulations of any other agency, subject to
14 the conditions that—

18 (2) the energy project satisfies the conditions
19 for a categorical exclusion under the National Envi-
20 ronmental Policy Act of 1969 (42 U.S.C. 4321 et
21 seq.); and

1 **SEC. 6. FRACTURING AUTHORITY WITHIN STATES.**

2 (a) DEFINITION OF FEDERAL LAND.—In this sec-
3 tion, the term “Federal land” means—

4 (1) public lands (as defined in section 103 of
5 the Federal Land Policy and Management Act of
6 1976 (43 U.S.C. 1702));

7 (2) National Forest System land;

8 (3) land under the jurisdiction of the Bureau of
9 Reclamation; and

10 (4) land under the jurisdiction of the Corps of
11 Engineers.

12 (b) STATE AUTHORITY.—

13 (1) IN GENERAL.—A State shall have the sole
14 authority to promulgate or enforce any regulation,
15 guidance, or permit requirement regarding the treat-
16 ment of a well by the application of fluids under
17 pressure to which propping agents may be added for
18 the expressly designed purpose of initiating or prop-
19 agating fractures in a target geologic formation in
20 order to enhance production of oil, natural gas, or
21 geothermal production activities on or under any
22 land within the boundaries of the State.

23 (2) FEDERAL LAND.—The treatment of a well
24 by the application of fluids under pressure to which
25 propping agents may be added for the expressly de-
26 signed purpose of initiating or propagating fractures

1 in a target geologic formation in order to enhance
2 production of oil, natural gas, or geothermal produc-
3 tion activities on Federal land shall be subject to the
4 law of the State in which the land is located.

5 **SEC. 7. FEDERAL LAND FREEDOM.**

6 (a) DEFINITIONS.—In this section:

7 (1) AVAILABLE FEDERAL LAND.—The term
8 “available Federal land” means any Federal land
9 that, as of May 31, 2013—

10 (A) is located within the boundaries of a
11 State;

12 (B) is not held by the United States in
13 trust for the benefit of a federally recognized
14 Indian Tribe;

15 (C) is not a unit of the National Park Sys-
16 tem;

17 (D) is not a unit of the National Wildlife
18 Refuge System; and

19 (E) is not a congressionally designated wil-
20 derness area.

21 (2) STATE.—The term “State” means—

22 (A) a State; and

23 (B) the District of Columbia.

24 (3) STATE LEASING, PERMITTING, AND REGU-
25 LATORY PROGRAM.—The term “State leasing, per-

1 mitting, and regulatory program” means a program
2 established pursuant to State law that regulates the
3 exploration and development of oil, natural gas, and
4 other forms of energy on land located in the State.

5 (b) STATE CONTROL OF ENERGY DEVELOPMENT
6 AND PRODUCTION ON ALL AVAILABLE FEDERAL
7 LAND.—

8 (1) STATE LEASING, PERMITTING, AND REGU-
9 LATORY PROGRAMS.—Any State that has established
10 a State leasing, permitting, and regulatory program
11 may—

12 (A) submit to the Secretaries of the Inter-
13 ior, Agriculture, and Energy a declaration that
14 a State leasing, permitting, and regulatory pro-
15 gram has been established or amended; and

16 (B) seek to transfer responsibility for leas-
17 ing, permitting, and regulating oil, natural gas,
18 and other forms of energy development from
19 the Federal Government to the State.

20 (2) STATE ACTION AUTHORIZED.—Notwith-
21 standing any other provision of law, on submission
22 of a declaration under paragraph (1)(A), the State
23 submitting the declaration may lease, permit, and
24 regulate the exploration and development of oil, nat-
25 ural gas, and other forms of energy on Federal land

1 located in the State in lieu of the Federal Govern-
2 ment.

3 (3) EFFECT OF STATE ACTION.—Any action by
4 a State to lease, permit, or regulate the exploration
5 and development of oil, natural gas, and other forms
6 of energy pursuant to paragraph (2) shall not be
7 subject to, or considered a Federal action, Federal
8 permit, or Federal license under—

9 (A) subchapter II of chapter 5, and chap-
10 ter 7, of title 5, United States Code (commonly
11 known as the “Administrative Procedure Act”);

12 (B) division A of subtitle III of title 54,
13 United States Code;

14 (C) the Endangered Species Act of 1973
15 (16 U.S.C. 1531 et seq.); or

16 (D) the National Environmental Policy Act
17 of 1969 (42 U.S.C. 4321 et seq.).

18 (c) NO EFFECT ON FEDERAL REVENUES.—

19 (1) IN GENERAL.—Any lease or permit issued
20 by a State pursuant to subsection (b) shall include
21 provisions for the collection of royalties or other rev-
22 enues in an amount equal to the amount of royalties
23 or revenues that would have been collected if the
24 lease or permit had been issued by the Federal Gov-
25 ernment.

1 (2) DISPOSITION OF REVENUES.—Any revenues
2 collected by a State from leasing or permitting on
3 Federal land pursuant to subsection (b) shall be de-
4 posited in the same Federal account in which the
5 revenues would have been deposited if the lease or
6 permit had been issued by the Federal Government.

7 (3) EFFECT ON STATE PROCESSING FEES.—
8 Nothing in this section prohibits a State from col-
9 lecting and retaining a fee from an applicant to
10 cover the administrative costs of processing an appli-
11 cation for a lease or permit.

12 **SEC. 8. FASTER PROJECT CONSULTATION.**

13 Section 7(b)(1) of the Endangered Species Act of
14 1973 (16 U.S.C. 1536(b)(1)) is amended—

15 (1) in subparagraph (A), by striking “90-day”
16 and inserting “60-day”; and

17 (2) in subparagraph (B)—

18 (A) in the matter preceding clause (i)—

19 (i) by striking “90 days” and insert-
20 ing “60 days”; and

21 (ii) by striking “90th day” and insert-
22 ing “60th day”;

23 (B) in clause (i), in the matter preceding
24 subclause (I), by striking “150th day” and in-
25 serting “100th day”; and

(C) in clause (ii), by striking “150 or more” and inserting “100 or more”.

3 SEC. 9. NEW SOURCE REVIEW PERMITTING.

(1) by inserting “(A)” before “The term”;

20 (3) by adding at the end the following:

21 “(B) Notwithstanding subparagraph (A), the
22 term ‘modification’ does not include a change at a
23 stationary source that is designed—

1 “(i) to reduce the amount of any air pol-
2 lutant emitted by the source per unit of produc-
3 tion; or

4 “(ii) to restore, maintain, or improve the
5 reliability of operations at, or the safety of, the
6 source,

7 except, with respect to either clause (i) or (ii), when
8 the change would be a modification as defined in
9 subparagraph (A) and the Administrator determines
10 that the increase in the maximum achievable hourly
11 emission rate of a pollutant from such change would
12 cause an adverse effect on human health or the envi-
13 ronment.”.

14 (b) CLARIFICATION OF DEFINITION OF CONSTRUC-
15 TION FOR PREVENTION OF SIGNIFICANT DETERIORA-
16 TION.—Subparagraph (C) of section 169(2) of the Clean
17 Air Act (42 U.S.C. 7479(2)) is amended to read as fol-
18 lows:

19 “(C) The term ‘construction’, when used in
20 connection with a major emitting facility, in-
21 cludes a modification (as defined in section
22 111(a)) at such facility, except that for pur-
23 poses of this subparagraph a modification does
24 not include a change at a major emitting facil-
25 ty that does not result in a significant emis-

1 sions increase, or a significant net emissions in-
2 crease, in annual actual emissions at such facil-
3 ity.”.

4 (c) CLARIFICATION OF DEFINITION OF MODIFICA-
5 TIONS AND MODIFIED FOR NONATTAINMENT AREAS.—

6 Paragraph (4) of section 171 of the Clean Air Act (42
7 U.S.C. 7501) is amended to read as follows:

8 “(4) The terms ‘modifications’ and ‘modified’
9 mean a modification as defined in section 111(a)(4),
10 except that such terms do not include a change at
11 a major emitting facility that does not result in a
12 significant emissions increase, or a significant net
13 emissions increase, in annual actual emissions at
14 such facility.”.

15 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
16 tion or the amendments made by this section shall be con-
17 strued to treat any change as a modification for purposes
18 of any provision of the Clean Air Act (42 U.S.C. 7401
19 et seq.) if such change would not have been so treated
20 as of the day before the date of enactment of this Act.

21 **SEC. 10. PROHIBITION ON RETROACTIVE PERMIT VETOES.**

22 Section 404 of the Federal Water Pollution Control
23 Act (33 U.S.C. 1344) is amended by striking subsection
24 (c) and inserting the following:

25 “(c) AUTHORITY OF EPA ADMINISTRATOR.—

1 “(1) POSSIBLE PROHIBITION OF SPECIFICA-
2 TION.—Until such time as the Secretary has issued
3 a permit under this section, the Administrator may
4 prohibit the specification (including the withdrawal
5 of specification) of any defined area as a disposal
6 site, and the Administrator may deny or restrict the
7 use of any defined area for specification (including
8 the withdrawal of specification) as a disposal site,
9 whenever the Administrator determines, after notice
10 and opportunity for public hearings, that the dis-
11 charge of such materials into such area will have an
12 unacceptable adverse effect on municipal water sup-
13 plies, shellfish beds and fishery areas (including
14 spawning and breeding areas), wildlife, or rec-
15 reational areas.

16 “(2) CONSULTATION REQUIRED.—Before mak-
17 ing a determination under paragraph (1), the Ad-
18 ministrator shall consult with the Secretary.

19 “(3) WRITTEN FINDINGS REQUIRED.—The Ad-
20 ministrator shall set forth in writing and make pub-
21 lic the findings and reasons of the Administrator for
22 making any determination under this subsection.”.

23 **SEC. 11. POLICY REVIEW UNDER THE CLEAN AIR ACT.**

24 Section 309 of the Clean Air Act (42 U.S.C. 7609)
25 is amended to read as follows:

1 **“SEC. 309. POLICY REVIEW.**2 “(a) ENVIRONMENTAL IMPACT OF PROPOSED LEGIS-
3 LATION.—4 “(1) IN GENERAL.—The Administrator shall re-
5 view, and comment in writing, on the environmental
6 impact of any matter relating to the duties and re-
7 sponsibilities granted to the authority of the Admin-
8 istrator pursuant to this Act or any other law con-
9 tained in any legislation proposed by a Federal de-
10 partment.11 “(2) PUBLISH.—A written comment referred to
12 in paragraph (1) shall be made public at the conclu-
13 sion of any review conducted under that paragraph.14 “(b) UNSATISFACTORY LEGISLATION.—In the event
15 the Administrator determines that any legislation reviewed
16 under subsection (a)(1) is unsatisfactory from the stand-
17 point of public health, welfare, or environmental quality,
18 the Administrator shall publish the determination of the
19 Administrator and the matter shall be referred to the
20 Council on Environmental Quality.”.

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